

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Niagara Post Office  
(Niagara, North Dakota)

Docket No. A2012-77

REPLY BRIEF OF THE PUBLIC REPRESENTATIVE

(January 26, 2012)

I. INTRODUCTION AND BACKGROUND

On December 2, 2011, the Commission docketed three petitions for review of the closing of the Niagara Post Office. The first petition was filed by Citizens Against the Closure of the Niagara Post Office on November 18, 2011.<sup>1</sup> The second petition was filed by Sandra K. Behm on November 29, 2011.<sup>2</sup> The third petition was filed by Tim Krueger on November 29, 2011.<sup>3</sup> On December 2, 2011, the Commission issued an order instituting the current review proceedings, appointing a Public Representative, and establishing a procedural schedule.<sup>4</sup> On December 5, 2011, the Postal Service

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<sup>1</sup> Petition Received from Citizens Against the Closure of the Niagara Post Office, November 18, 2011 (Petition1).

<sup>2</sup> Petition Received from Sandra K. Behm, November 29, 2011 (Petition2).

<sup>3</sup> Petition Received from Tim Krueger, November 29, 2011 (Petition3).

<sup>4</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 2, 2011. (Order No. 1020).

filed an electronic version of the administrative record concerning its Final Determination, Postal Service Docket Number 1375070-58266.<sup>5</sup>

The Petitioners; Citizens Against the Closure of the Niagara Post Office, Sandra K. Behm, and Tim Krueger; have not filed Participant Statements supporting their appeal. The Postal Service filed comments supporting its closure determination on January 12, 2012, in lieu of a legal brief.<sup>6</sup>

## II. STATEMENT OF FACTS

The Niagara Post Office is described by the Postal Service in its Final Determination as an EAS-53 level post office located in Niagara, North Dakota, Grand Forks County. AR, Item No. 1 at 1. Before being closed, the Niagara Post Office provided service to 31 post office box customers and 31 retail customers. *Id.*, Item No. 1 at 1. The Niagara Post Office averaged 10.9 daily retail window transactions representing 11 minutes of retail workload daily. *Id.*, Item No. 10 at 1.

On May 9, 2011, the Manager of Post Office Operations requested permission to investigate the possible closure of the Niagara Post Office. *Id.*, Item No. 1 at 1. The request was granted. *Id.*

On May 25, 2011, the Postal Service notified customers of the Niagara Post Office of a possible change in the way their postal service is provided. *Id.*, Item No. 21 at 1. As described in the notice, customers were given the option of receiving pickup, delivery, sale of stamps and all other customary postal services by highway contract route service from the Petersburg Post Office located 7 miles away. *Id.* Included was a questionnaire to be completed and returned by June 2, 2011. *Id.* In addition, customers were invited to attend a public meeting on June 2, 2011, at which Postal

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<sup>5</sup> United States Postal Service Notice of Filing Administrative Record, December 5, 2011 (AR). (AR)

<sup>6</sup> United States Postal Service Comments Regarding Appeal for Review of the Niagara Post Office, January 12, 2012 (Postal Service Comments).

Service representatives would be available to answer questions and provide information about postal service to the community. *Id.*

Of the 130 questionnaires distributed by the Postal Service, 40 were completed and returned: 4 responded favorably to the proposal; 10 expressed opposition or concern; and 26 expressed no opinion. *Id.*, Item No. 23 at 1. The meeting was held on June 2, 2011 as scheduled with 29 customers in attendance. *Id.*, Item No. 24 at 1.

On July 19, 2011, a formal proposal to close the Niagara Post Office was forwarded to that post office for posting for a period of sixty days. *Id.*, Item No. 31 at 1. An invitation to file comments was posted in the Niagara Post Office, Petersburg Post Office, and Larimore Post Office on July 25, 2011 and removed on September 26, 2011. *Id.*, Item No. 36 at 1, 3 & 5. A total of two comments were received during this posting period. *Id.*, Item No. 40 at 1. That proposal was transmitted to the Vice President for Delivery and Post Office Operations on October 10, 2011. *Id.*, Item No. 45 at 1.

On October 13, 2011, the Final Determination to close the Niagara Post Office was approved. *Id.*, Item No. 47 at 11. The decision was based upon (1) the resignation of the Postmaster on October 1, 2008; (2) decline in workload; (3) intending to provide regular and effective service by highway contract route service; and (4) expected annual economic savings of about \$23,719. *Id.*, at 7. The Final Determination did consider and respond to various concerns expressed by postal customers. *Id.*, Item No. 47.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

The Petitioners argument in opposition to the closing of the Niagara Post Office can be summarized as follows: (1) the effect on providing effective postal service to the community; (2) the impact on the community; (3) the economic savings; and (4) the impact on employees.

## B. The Postal Service

On January 12, 2012, the Postal Service filed comments in lieu of the answering brief permitted by Order No. 1020. In that filing, the Postal Service supports its decision to close Niagara Post Office for the following reasons: (1) the postmaster vacancy; (2) minimal workload; (3) declining office revenue; (4) availability of a variety of delivery and retail options; (5) very little recent growth in the area; (6) minimal impact upon the community; and (7) the expected financial savings from closing the post office. Postal Service Comments at 4.

## IV. STANDARD OF REVIEW AND APPLICABLE LAW

### A. Standard of Review

The Commission's authority to review post office closings provided by 39 U.S.C. § 404(d)(5). That section requires that the Postal Service's determination be reviewed on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds are: (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (B) without observance of procedure required by law; or (C) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.<sup>7</sup>

### B. The Law Governing Postal Service Determinations

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<sup>7</sup> Section 404(d)(5) also authorizes the Commission to suspend the effectiveness of a Postal Service determination pending disposition of the appeal.

Prior to making a final determination to close or consolidate a post office, the Postal Service is required by 39 U.S.C. § 404 to consider: (i) the effect of the closing on the community served; (ii) the effect on the employees of the Postal Service employed at the office; (iii) whether the closing is consistent with the Postal Service's provision of "a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;" (iv) the economic savings to the Postal Service due to the closing; and (v) such other factors as the Postal Service determines are necessary. See 39 U.S.C. § 404(d)(2)(A)

In addition, the Postal Service's final determination must be in writing, address the aforementioned considerations, and be made available to persons served by the post office. 39 U.S.C. § 404(d)(3). Finally, the Postal Service is prohibited from taking any action to close a post office until 60 days after its final determination is made available. 39 U.S.C. § 404(d)(4).

#### V. ADEQUACY OF THE POSTAL SERVICE'S FINAL DETERMINATION

After careful review of the Postal Service's Final Determination, the materials in the Administrative Record, the arguments presented by Petitioners and the Petition submitted by customers of the Niagara Post Office, and the Postal Service Comments, the Public Representative concludes that the Postal Service has followed applicable procedures, that the decision to close the Niagara Post Office is not arbitrary or capricious, and that the Postal Service's decision is supported by substantial evidence.

*Notice to Customers* - The Postal Service complied with the procedural requirements related to providing discontinuance notices and postings. The Postal Service posted the discontinuance notice of the Niagara Post Office for sixty days from July 26, 2011 to September 26, 2011. Copies of documentation posted at the Niagara Post Office, Petersburg Post Office, and Larimore Post Office are provided as part of the administrative record. AR Item No. 36 at 2, 4, & 6. The Final Determination to close the Niagara Post Office was also posted at these post offices on October 24, 2011 and removed on November 22, 2011. *Id.*, Item No. 49 at 2, 3 & 6.

*Effect on the Community* - the Petitioners requested to reconsider the closing of the Niagara Post Office because of the adverse effect on the community, such as the loss of a meeting place for the community. The Postal Service suggests that residents may continue to meet informally, socialize, and share information at other businesses, churches and residences in town. Postal Service Comments at 9. The Postal Service acknowledges the importance of regular and effective postal service to the community and business. It states that it will continue to provide effective and regular postal service to the community. AR, Item No. 47 at 6.

*Effect on Postal Service* – the Petitioners expressed concern that their access to safe and easily accessible postal service will be denied with the closing of the Niagara Post Office. Addressing this concern, the Postal Service explains that the proposed alternative delivery service will meet the mailing and service needs of the community in a more cost effective manner. *Id.*, Item No. 47 at 2. The Postal Service states that all services provided at the post office will be available from the carrier, and customers will not have to travel to another post office for service with the exception of post office box service and bulk mail acceptance. *Id.*, at 3. Additionally, delivery and retail services are provided by the Petersburg Post Office located 7 miles away from 8:30 to 12:00am and 13:00 to 16:15pm Monday to Friday, and 7:30 to 8:45 on Saturday. *Id.* There are 54 post office boxes available at this post office. *Id.*, at 2.

The Petitioners also expressed concern about the loss of post office that serve thousands of elderly veterans, young veterans and their families, and elderly people and customers with disabilities. Addressing this concern, the Postal Service contends that customers are not required to travel to another post office for postal service as postal services will be provided by the carrier to roadside mailboxes located close to customers' residences. *Id.*, at 3. The Postal Service further explains that it will provide delivery service to the home of a customer in hardship cases. *Id.* at 3. The Postal Service also offers other options, such as stamps by mail; Money Order Application forms at customer convenience; and stamp sales in stores and gas stations, online at [usps.com](http://usps.com), or by calling 1-800-stamp-24. *Id.*, at 2.

Economic Savings - The Postal Service provides estimates of \$23,719 in annual economic savings after deducting the estimated cost of the highway contract route (HCR) service. *Id.*, at 6. The economic savings calculation takes into account the Postmaster's salary and benefits of \$15,350 and \$5,142, and a rental cost of \$5,556. The cost of the alternative HCR service is estimated at \$2,329. *Id.*

The Public Representative believes that this cost saving estimate is inflated for two reasons. (1) It does not take into account the likelihood of revenue losses due to

- possible loss of customers to competitors for certain services; and
- possible loss of post office box revenue resulting from post office box customers switching to roadside HCR service.

(2) The estimated cost for the alternative service appears to be conservative. The cost estimate is calculated using a total of 154.44 hours of HCR contract route service annually, and HCR hourly rate of \$15.08. *Id.*, Item No. 17 at 1. This is approximately 51 minutes of HCR service daily using 302 working days annually.

*Effect on Employees* - The postmaster's position has been vacant since the resignation of the postmaster on October 1, 2008. *Id.*, Item No. 47 at 6. The administrative record shows that a temporary officer-in-charge (OIC) has been assigned to operate the office. *Id.* The Postal Service comment indicates that the temporary OIC will either be reassigned or terminated. Postal Service Comments at 11. The record shows that no other employee will be affected. AR, Item No. 47 at 6.

## VI. CONCLUSION

The Public Representative suggests that the Postal Service should provide a more reasonable economic savings estimate by taking into account the possible loss of some revenues from closing the Niagara Post Office. Additionally, the cost estimate for the alternative service, which is based upon about 51 minutes of HCR daily service, appears to be conservative, inflating the anticipated economic savings. Aside these

concerns, the Public Representative concludes that the decision of the Postal Service to close the Niagara Post Office should be affirmed.

Respectfully Submitted,

/s/ Getachew Mekonnen  
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